IN THE HIGH COURT OF DELHI

Bail Application No.1408/2007

#	Ashwani Oberoi	.....	Petitioners
!	through:	Ms.Rebecca M.John, Advocate with Mr.Vishal Gosain and Mr.Vijay Arora, Advocates	
		VERSUS	
$	State (NCT of Delhi)	.....	Respondent
^	through :	Mr.Pawan Sharma, Adv. for State. Mr.K.C.Mittal, Advocate with Mr.Surjit K.Singh, Advocate for the complainant.	

Bail Application No.1542/2007

#	Amarjit Singh & Anr.	.....	Petitioners
!	through:	Dr.Ashutosh, Advocate	
		VERSUS	
$	State (NCT of Delhi)	.....	Respondent
^	through :	Mr.Pawan Sharma, Adv. for State. Mr.K.C.Mittal, Advocate with Mr.Surjit K.Singh, Advocate for the complainant.	

% DATE OF DECISION: 12.10.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

FIR.No.135/07
U/S 420/406/120/34 IPC
P.S. Shalimar Bagh

1. Petitioners seek pre-arrest bail in the afore-noted FIR.

2. The FIR has been registered pursuant to a complaint lodged by Girish Kumar Khattar who stated that Somwati and her husband Ombir (since deceased) approached him through one Mehar Singh in respect of sale of plot No.AG-36, Shalimar Bagh, New Delhi which was allotted to Ombir and Somwati by DDA in lieu of some land which was acquired and placed at the disposal of DDA. That he was told that Somwati and her husband had to deposit money with DDA and that leasehold rights would be granted by DDA to them. That based on the representation, complainant deposited a sum of Rs.9,24,207/- and also deposited Rs.52,411/- as stamp duty with DDA. That he paid Rs.9,96,000/- to Somwati and Ombir as sale consideration of the plot and got executed a power of attorney, special power of attorney and a will from them in his favour. That all original documents pertaining to the plot issued by DDA were handed over to him by Somwati and her husband. That the transaction in question took

place on 24.6.1997 and that after DDA handed over possession of the plot he had been in possession thereof. He had erected a boundary wall. Municipal tax pertaining to the vacant land were paid by him. That he remained in uninterrupted possession of the property till 17.2.2000. That on 17.2.2000, Ombir lodged a false complaint with the police that he had lost original titler documents. That on 6.8.2000, Ombir and some goons attempted to trespass on the land. Proceedings under Section 145 Cr.P.C. were initiated by SDM who passed an order holding that Ombir and Somwati were in possession of the plot. That he challenged the order passed by the SDM by way of Criminal Revision Petition in Delhi High Court, which vide order dated 4.1.2005, stayed the order passed by the SDM. That notwithstanding stay order passed by Delhi High Court, police handed over possession of the plot to Ombir and his wife. That in a contempt petition filed in Delhi High Court, orders were passed on 16.3.2005 directing Ombir and Somwati to maintain status-quo. That he had filed a suit for possession, permanent and mandatory injunction. That on 27.3.2006, a compromise was entered into as per which he agreed to pay further sum of Rs.10 lacs to Somwati and Ombir. That he paid Rs.10 lacs to Somwati and Ombir who made categorical statements on oath admitting

the compromise. That in terms of the compromise, suit was decreed vide judgment and decree dated 19.4.2006. That the accused persons i.e. Somwati and the petitioners had thereafter once again attempted to trespass in the property. That petitioners of Bail Application No.1542/2007 had obtained an electricity connection for the plot in question and on the basis of some false and fabricated documents had obtained sanction from MCD to construct on the plot. That the complainant was cheated, in that, had parted with nearly Rs.30 lacs to acquire the plot and accused persons had fabricated the documents to deny the title of the complainant.

3. Amarjit Singh and Surjit Singh, petitioners of Bail Application No.1542/2007 state that Ombir and Somwati sold the plot to them vide agreement to sell dated 15.2.2005. That far from being the cheaters, they had been cheated by Somwati and Ombir. They disclaim any past knowledge of either any transaction or litigation inter se the complainant and Somwati/Ombir.

4. They rely upon the sale agreement dated 15.2.2005.

5. Ashwani Oberoi, petitioner of Bail Application No.1408/2007 states that he has no role in the transaction between the complainant and Somwati and her husband and the

transaction between Somwati and her husband and Amarjit Singh and Surjit Singh, save and except, that he witnessed the sale agreement dated 15.2.2005 executed by Somwati and Ombir in favour of Surjit Singh and Amarjit Singh.

6. Prima facie, petitioners appear to be innocent persons, but a deeper probe reveals a probable conspiracy to grab the plot.

7. Undisputedly, Ashwani Oberoi, petitioner of Bail Application No.1408/2007 is a witness to the sale agreement dated 15.2.2005. Further, admittedly, Ombir had been employed by him in his business which he was carrying on under the name and style of M/s Shiksha Creations.

8. Further, admittedly, when a dispute with relation to possessory rights in the plot took place between the complainant and Somwati and her husband and pursuant to the order passed by the learned SDM on 31.12.2005, possession of the plot was handed over to Somwati and Ombir and vide memo dated 4.1.2005 police officials had recorded spot proceedings of handing over possession. This memo has been signed by Ashwani Oberoi as a witness.

9. Further, on 4.1.2005, Ashwani Oberoi is a witness of another written memorandum wherein it has been recorded that

dispute pertaining to the plot was sub-judice and that the parties would abide by the decision of the court.

10. Afore-noted documents bearing signatures of Ashwani Oberoi evidences that he had full knowledge of a civil dispute pertaining to the plot and had witnessed the writing that parties would abide by the court decision.

11. It would be relevant to note that Somwati and Ombir are illiterate persons evidenced by the fact that on all the documents executed by them, they affixed their thumb impressions. They can not even sign. The fact that Ombir was an employee of Ashwani Oberoi assumes relevance. Ashwani Oberoi's involvement, though as a witness in the dispute between the complainant and Ombir and his wife Somwati is probably due to the fact that he being a literate person, his employee had great faith in him.

12. Thus, there is prima facie material where from a strong inference can be drawn that Ashwani Oberoi had a role deeper than that of a mere bystander. His knowledge of a civil litigation pertaining to the plot and yet his being a witness to the subsequent sale of the plot needs a deeper probe to unravel, if there existed any conspiracy.

13. Viz. Amarjit Singh and Surjit singh, it would be

relevant to note that in the sale agreement on which they rely and which sale agreement has been witnessed by Ashwani Oberoi, it has been recorded that the plot is free from any litigation. This recital in the sale agreement is factually incorrect. As noted hereinabove, though Ashwani Oberoi has signed as a mere witness but the fact that Ombir was his employee and was illiterate coupled with involvement of Ashwani Oberoi at each stage of the dispute with the complainant pertaining to the plot leans against a presumption that Ashwani Oberoi was a mere witness and no further role.

14. Whether Somwati and Ombir acted alone or in concert with the petitioners has yet to be ascertained by the police. The investigation is still on. Whereas Ombir has died, Somwati is absconding. Her whereabouts are not known.

15. The complainant has the house tax receipts evidencing that he was paying municipal tax for the plot in question. His possessory rights were affirmed by Somwati and Ombir when the civil suit was compromised on 27.3.2006.

16. Petitioners of Bail Application No.1542/2007 rely upon the sale agreement dated 15.2.2005 to show their possessory rights.

17. Role of the petitioners is not free from any doubt. The

conspiracy, if any, can unearthed only after a thorough and sustained interrogation of the petitioners.

18. The complainant has spent nearly Rs.30 lacs on the plot in question. The amount is not a meager sum.

19. In my opinion, no case is made out to grant anticipatory bail to the petitioners.

20. The petitions are dismissed.

October 12, 2007 PRADEEP NANDRAJOG, J.
pu